



Docket No.: 64965-054

*9/RECON Nic*  
*Alkins*  
*4/3/03*  
PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of : **RESPONSE UNDER 37 CFR 1.116**  
Shashank MERCHANT, et al. : **EXPEDITED PROCEDURE**  
Serial No.: 09/315,973 : Group Art Unit: 2662  
Filed: May 21, 1999 : Examiner: Anh-Vu H. Ly  
For: NETWORK SWITCH WITH MULTIPLE-PORT SNIFFING

**RECEIVED**

APR 02 2003

**REQUEST FOR RECONSIDERATION**

Technology Center 2600

Box AF  
Commissioner for Patents  
Washington, DC 20231

Sir:

This request is filed in response to the Office Action mailed January 28, 2003.

Claims 1-19 are presented for examination. Claims 7-13 and 19 are found allowable subject to being rewritten in independent form.

Claims 1-6 and 14-18 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Kerstein in view of Murthy. The Examiner admits that Kerstein does not disclose monitoring traffic at sniffed ports. Murthy is relied upon for disclosing this feature.

This rejection is respectfully traversed for the following reasons.

In the previous Office Action, the Examiner took the position that it would have been obvious to modify the Kerstein system as suggested by Murthy "to reduce the complexity of the switching system."



Docket No.: 64965-054

PATENT

AF 1/2662  
2700

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Re Application of

: Response Under 37 CFR 1.116 - Expedited Procedure

Shashank MERCHANT, et al.

Serial No.: 09/315,973

: Group Art Unit: 2662

Filed: May 21, 1999

: Examiner: Anh-Vu H. Ly

For: NETWORK SWITCH WITH MULTIPLE-PORT SNIFFING

Box AF  
THE COMMISSIONER FOR PATENTS AND TRADEMARKS  
Washington, DC 20231

RECEIVED

APR 02 2003

Dear Sir:

Technology Center 2600

Transmitted herewith is an Amendment in the above identified application.

☒  
☐  
☐

No additional fee is required.

Applicant is entitled to small entity status under 37 CFR 1.27

Also attached:

The fee has been calculated as shown below:

	NO. OF CLAIMS	HIGHEST PREVIOUSLY PAID FOR	EXTRA CLAIMS	RATE	FEE
Total Claims	19	20	0	\$18.00 =	\$0.00
Independent Claims	2	2	0	\$84.00 =	\$0.00
Multiple claims newly presented					\$0.00
Fee for extension of time					\$0.00
Total of Above Calculations					\$0.00

☐

Please charge my Deposit Account No. 500417 in the amount of \$0.00. An additional copy of this transmittal sheet is submitted herewith.

☒

The Commissioner is hereby authorized to charge payment of any fees associated with this communication or credit any overpayment, to Deposit Account No. 500417, including any filing fees under 37 CFR 1.16 for presentation of extra claims and any patent application processing fees under 37 CFR 1.17.

Respectfully submitted,

MCDERMOTT WILL & EMERY

Alexander V. Yampolsky

Registration No. 36,324

600 13<sup>th</sup> Street, N.W.  
Washington, DC 20005-3096  
(202) 756-8000 AVY:men  
Facsimile: (202) 756-8087  
Date: March 31, 2003

In response, the Applicants submitted that the modification of the Kerstein system by introducing the multi-processing environment of Murthy would make the Kerstein system much more complex rather than reduces it complexity, as the Examiner asserts.

In the present Office Action, the Examiner agrees with the Applicants' argument and withdraws this reason for modification.

Instead, the Examiner asserts that it would have been obvious to modify the Kerstein system as suggested by Murthy "for the purpose of network analysis."

In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the Examiner to provide a basis in fact and/or cogent technical reasoning to support the conclusion that one having ordinary skill in the art would have been motivated to combine references to arrive at a claimed invention.

*Uniroyal, Inc. v. Rudkin-Wiley Corp.*, 837 F.2d 1044, 5 USPQ2d 1434 (Fed. Cir. 1988).

However, the Examiner offered no logical reason, and no such reason is apparent, to support the conclusion that one having ordinary skill in the art would have been impelled to modify Kerstein in view of Murthy teaching.

Independent claim 1 recites a multiport data communication system for transferring data packets between ports. The data communication system comprises a plurality of ports for receiving and transmitting the data packets, and a decision making engine responsive to received data packets for directing the received data packets to the ports selected for transmission of the received data packets.

The decision making engine includes:

- a plurality of queuing devices corresponding to the plurality of ports for queuing data blocks representing the data packets received by the corresponding ports,

- logic circuitry responsive to the plurality of queuing devices for processing the data blocks in accordance with a prescribed algorithm to determine destination information,

- a forwarding circuit responsive to the logic circuitry for identifying at least one transmit port , and

- a traffic capture mechanism for enabling one port of said plurality of ports to output data transferred via multiple other selected ports of said plurality of ports.

Independent claim 14 recites that in a communication network having a plurality of ports and a decision making engine for controlling data forwarding between the ports, a method of monitoring network activity comprises the steps of:

- placing data blocks representing received data packets in a plurality of data queues to be processed by the decision making engine,

- processing the data queues by logic circuitry in accordance with a prescribed algorithm to determine destination information,

- identifying at least one port for transmitting data packets based on the destination information,

- selecting multiple sniffed ports among the plurality of ports for monitoring the data packets transferred via the sniffed ports, and

- selecting a sniffer port among the plurality of ports to provide output of the data packets transferred via the sniffed ports.

Hence, the claimed invention enables the system to monitor traffic at multiple sniffed ports by queuing data blocks representing the data packets received by the corresponding ports, and processing the data blocks in accordance with a prescribed algorithm to determine destination information.

The Examiner admits that Kerstein does not disclose monitoring traffic at sniffed ports. Murthy is relied upon for disclosing this feature.

As indicated above, the Examiner takes the position that it would have been obvious to modify the Kerstein system as suggested by Murthy "for the purpose of network analysis."

Considering the Kerstein patent, the reference discloses a diagnostic mode of an internal rules checker (IRC). In particular, the multiport switch 12 passes header information for the corresponding data frames to the IRC and simultaneously transmits the same header information to an external device. The external device may be a logic analyzer that simulates the proper functioning of the IRC and determines whether the IRC is functioning properly without requiring a direct probe of the multiport switch 12 (col. 8, lines 38-44).

By contrast, Murthy suggests attachment of a direct probe (monitoring device 9) to a multiport switching device (bridge 1) to monitor all packets at a selected port.

The Examiner offered no logical reason, and no such reason is apparent, to support the conclusion that one having ordinary skill in the art would have been motivated to attach the probe of Murthy to the multiport switch of Kerstein. It is not apparent why one skilled in the art would have recognized any advantage to be gained by the proposed combination of references.

Moreover, as demonstrated above, Kerstein **expressly teaches away** from the modification suggested by the Examiner (attaching a direct probe), thereby constituting further **evidence of nonobviousness**. *In re Bell*, 991 F.2d 781, 26 USPQ2d 1529 (Fed. Cir. 1993); *In re*

*Hedges*, 783 F.2d 1038, 228 USPQ 685 (Fed. Cir. 1986); *In re Marshall*, 578 F.2d 301, 198 USPQ 344 (CCPA 1978).

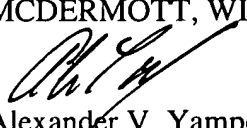
Accordingly, Applicants submit that the lack of any motivation for the proposed combination of references to arrive at the claimed invention undermine the basis for the Examiner's rejection under 35 U.S.C. § 103. Applicants, therefore, respectfully submit that the rejection of claims 1-6 and 14-18 under 35 U.S.C. § 103 is improper and should be withdrawn.

In view of the foregoing, and in summary, claims 1-19 are considered to be in condition for allowance. Favorable reconsideration of this application is respectfully requested.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

MCDERMOTT, WILL & EMERY



Alexander V. Yampolsky  
Registration No. 36,324

600 13<sup>th</sup> Street, N.W.  
Washington, DC 20005-3096  
(202) 756-8000 AVY:men  
Facsimile: (202) 756-8087  
**Date: March 31, 2003**